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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/428,363	10/27/1999	FREDERICK MURRAY BURG	113571	4560

7590 03/18/2003  
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EXAMINER

LIN, KENNY S

ART UNIT	PAPER NUMBER
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2154

8

DATE MAILED: 03/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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22879 7590 02/26/2003

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FORT COLLINS, CO 80527-2400

EXAMINER

LIN, KENNY S

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<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/428,363		BURG ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Kenny Lin		2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 December 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 7-16 and 18-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-16 and 18-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

1. Claims 1-5, 7-16 and 18-27 are presented for examination.
2. The text of those sections of Title 35, U.S. code not included in this office action can be found in prior office action.

**Claim Rejections - 35 USC § 103**

3. Claims 1-5, 7-16 and 18-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barkan et al, U.S. Patent Number 6,366,575, in view of Morganstein et al, U.S. Patent Re. 37,001.
4. Barkan et al and Morganstein et al were cited in the last office action.
5. As per claims 1 and 13, Barkan et al taught the invention as claimed including a method/apparatus for setting up a call between a subscriber premises and a call center (fig. 1, col.1, lines 18-20) comprising:
  - a. Receiving a call set up request responsive to the subscriber premises (col.1, lines 18-29), said gateway being connected to the subscriber premises via a data network (col.3, lines 47-55);
  - b. Sending a query to the call center (col.5, lines 26-39);

- c. Preparing a call set up instruction for setting up the call between the subscriber premises and the call center (col.6, lines 6-19) if an availability reply is received from the call center (col.5, lines 59-66); and
- d. Estimating a time-in-queue (col.5, lines 15-20) for the call center to be available to receive the call and preparing a call queue status message for delivery to the gateway (col.3, lines 58-67, col.4, lines 56-61, col.5, lines 27-37, line 53 to col.6, line 19, col.6, lines 52-55).

6. Although Barkan et al did not specifically teach to use a gateway for the system, Barkan et al taught to use a web server device which has the functionalities of a gateway (col.3, lines 39-55). Barkan et al did not specifically teach the reception of an unavailability reply from the call center. However, Morganstein et al taught the reception and use of unavailability replies (col.4, lines 63-67, col.6, lines 2-13) in their disclosure. Furthermore, Morganstein et al also taught to estimate the time-in-queue (col.5, lines 18-20) and prepare a call queue status message (col.2, lines 15-18, col.5, lines 26-39, col.9, lines 10-12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Barkan et al and Morganstein et al because Morganstein et al's use of an unavailability reply helps Barkan et al's system from overloading the queues and incoming traffic and further provide the customers with alternate services.

7. As per claims 2 and 14, Barkan et al and Morganstein et al taught the invention substantially as claimed in claims 1 and 13. Barkan et al further taught that a call path between subscriber premises and the call center is provided (col.6, lines 33-45).
8. As per claim 3, Barkan et al and Morganstein et al taught the invention substantially as claimed in claim 1. Barkan et al further taught that the call path is provided in response to the call set up instruction (col.6, lines 33-35).
9. Barkan et al did not specifically teach that the call path is provided by a network switch. However, Morganstein et al further taught that network switch may be included in the network to provide call paths (col.2, lines 34-42). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Barkan et al and Morganstein et al because Morganstein et al's teaching of including a switch in the network enables Barkan et al's system to receive and originate calls.
10. As per claims 4 and 15, Barkan et al and Morganstein et al taught the invention substantially as claimed in claims 1 and 13. Barkan et al further taught that a call to the subscriber premises is placed when providing the call path (col.6, lines 33-45).
11. As per claims 5 and 16, Barkan et al and Morganstein et al taught the invention substantially as claimed in claims 1 and 13. Barkan et al further taught that a call to the call center is placed when providing the call path (col.6, lines 33-45).

12. As per claims 7 and 18, Barkan et al and Morganstein et al taught the invention substantially as claimed in claims 1 and 13. Morganstein et al further taught to send the call queue status message to the gateway for delivery to the subscriber premises (col.2, lines 15-18, col.3, lines 64-67, col.5, lines 26-39, col.9, lines 10-12).

13. As per claims 8 and 19, Barkan et al and Morganstein et al taught the invention substantially as claimed in claims 1 and 13. Barkan et al further taught to include the reception of an agent available notice from the call center (col.5 line 59 to col.6 line 19) and preparation of an updated call queue status message for delivery to the gateway (col.3, lines 58-67, col.4, lines 56-61, col.5, lines 27-37, line 53 to col.6, line 26, col.6, lines 52-55).

14. As per claims 9 and 20, Barkan et al and Morganstein et al taught the invention substantially as claimed in claims 1 and 13. Barkan et al further taught the preparation of an updated call queue status message for delivery to the gateway after receiving the availability reply (col.3, lines 58-67, col.4, lines 56-61, col.5, lines 27-37, line 53 to col.6, line 26, col.6, lines 52-55).

15. As per claims 10 and 21, Barkan et al and Morganstein et al taught the invention substantially as claimed in claims 1 and 13. Barkan et al further taught that the subscriber premises include a computer for communication with the gateway and a telephone for

communicating with the call center (figs.1-3, col.1, lines 18-29, col.3, lines 3-12, 39-45, 47-52, col.4, lines 44-46).

16. As per claims 11-12 and 22-23, Barkan et al and Morganstein et al taught the invention substantially as claimed in claims 1 and 13. Barkan et al further taught the preparation of a call connection message related to the call being set up between the subscriber premises and the call center and sending the call connection message to the gateway for delivery to the subscriber premises (col.6, lines 33-60).

17. As per claims 24 and 26, Barkan et al and Morganstein et al taught the invention substantially as claimed in claims 1 and 13. Barkan et al further taught that the data network is Internet (col.3, lines 47-52, 58-60).

18. As per claims 25 and 27, Barkan et al and Morganstein et al taught the invention substantially as claimed in claims 1 and 13. Barkan et al further taught to utilize a telephone at the subscriber premises for enabling communication between a user at the subscriber premises and an available agent at the call center (fig.1, col.3, lines 3-12, col.4, lines 44-46).

### **Conclusion**

19. Applicant's arguments with respect to claims 1-5, 7-16 and 18-27, filed on 12/18/2002 have been considered but are not deemed to be persuasive and are moot in view of the new ground(s) of rejection.



20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenny Lin whose telephone number is (703)305-0438. The examiner can normally be reached on 8 AM to 5 PM Tuesday to Friday and every other Monday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (703)305-9678. Additionally, the fax numbers for Group 2100 are as follows:

Official Responses:	(703) 746-7239
After Final Responses:	(703) 746-7238
Draft Responses:	(703) 746-7240

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-5140.

ksl  
February 20, 2003



MENG-AL T. AN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100